LOW KWAN MOI & ORS. v. RAMLI BIN JAMIL & ORS. & GOVERNMENT OF MALAYSIA

[O.C.J. (Oliver Phipps J.C.) March 10, 1981]

[Muar – Civil Suit No. 124 of 1973]

Negligence – Duty to take care – Police officer – Police officer pursuing person attempting to avoid arrest – Extent of policeman's duty of care to that person.

During the Chinese New Year, the police conducted raids on boats tied up at the Muar river front (quay) where a number of fishermen were gambling.

The majority of the men on the boat jumped into the river and the police party lined the bank shouting at them to come up to be taken away. Most of them came to shore and were arrested. The deceased was still in the water and appeared to be in difficulty.

At that time, a passing fishing boat realising his distress, came up to pick him up, but the approaching boatman was deterred from the act of rescue by a shout from the leader of the police party warning him not to interfere and pick up the man. If he did so, he would be arrested.

The fishing boat accordingly pulled away. The man struggling in the water went down. His body was recovered from the river some hours later.

The personal representatives of the deceased sued the policemen and the Government for damages.

Held: the policeman who uttered the threat ought to have known and foreseen as any reasonable man would have known and foreseen that his shouted threat would deter the boatmen from accomplishing his act of mercy in going to the aid of the deceased. The 2nd & 7th defendants were therefore 75% liable.

CIVIL SUIT.

Etican Ramasamy for the plaintiffs.
Mohamed Shafie bin Mohamed Abdullah (Federal Counsel) for the defendants.

Cur. Adv. Vult.

Oliver Phipps J.C.: I have carefully gone through the evidence of the many witnesses in this case as given from the box and considered the able arguments of the learned Federal Counsel and Counsel for the Plaintiffs.

As it was emphasised by Counsel the crux of the matter is whether or not Defendant No. 2 KUA BEN KIAN PC 57244 uttered that shout with the threat to arrest the Good Samaritan P.W.4 who had gone to the aid of the man struggling in the water – the words being "Jangan tolong, kalau tolong saya tangkap sama awak".

I accept the evidence of that Good Samaritan who heard the shout though he could not say which of the police party uttered the shout, and the evidence of P.W.3 who both heard the shout and saw the person who shouted being defendant No. 2 – he was on a boat berthed very nearby within shouting distance and easily able to see and identify distance.

They are the only two independent witnesses with no individual axes to grind nor expectation of reward.

It may be that in shouting as he did, defendant No. 2 was carried away by excess of zeal wanting to nab the man in the water for the police and not have him borne away by the passing boat man. Nevertheless it was a thoughtless reckless and graceless thing to do as he ought to have known and foreseen as any reasonable man would have known and forseen that his shouted threat would deter the boat man from accomplishing his act of mercy in going to the aid of the man in the water, and frightened him off as it did in this case with the tragic consequence that ensued.

Defendant No. 1 was about his other duties at this time and can in no way be said to have aided or abetted defendant No. 2.

I do not attach anything sinister to the holding of the stick or packing up of the bottle.

The gesture with the stick could have been taken either way – a holding out for the swimmer to grasp or as a fending off.

To me, it was the shouted threat that brought about or largely contributed to the tragedy – The man struggling in the water going under after the rescuing boat was ordered away.

Counsel for Plaintiff conceded that there may have been contributory negligence on the part of the man in the water when he first jumped in as did some others. He could have come ashore earlier as did some of the others in the water. But after the sampan had been warned of and roared away from him it was too late exhausted as he would have been after being in the water for sometime.

I therefore find against the 2nd Defendant and his employer the 7th Defendant to the extent of 75% liability, the deceased having contributed 25% thereof.

There will be judgment for the Plaintiffs against the 2nd and 7th Defendants for 75% of the damages previously agreed by the parties with interest at 6% per annum from date of service of the Writ and costs. I also order half costs to be paid to the Plaintiffs in respect of their claims against 1st, 3rd, 4th, 5th and 6th Defendants which I have dismissed.

Order accordingly.

UNITED MALAYAN BANKING CORPN. BHD. v. SOO LEAN TOOI & ORS.

[O.C.J. (Yusof Abdul Rashid J.) February 6, 1982]

[Johore Bahru – Originating Summons No. 38 of 1981]

Jurisdiction – Reciprocal enforcement of judgment – Reciprocal Enforcement of Judgments Act 1958 (Act 99), ss. 4 & 5(1)(a)(ii) & (iii) – Courts of Judicature Act 1964 (Act 91), s. 23(1)(b) – Singapore Supreme Court of Judicature Act 1969, s. 16(1)

Practice & Procedure – Reciprocal enforcement of judgment – Reciprocal Enforcement of Judgments Act 1958, (Act 99), ss. 4 & 5(1)(a)(ii) & (iii) – Courts of Judicature Act 1964 (Act 91), s. 23(1)(b) – Singapore Supreme Court of Judicature Act 1969, s. 16(1)

The plaintiffs on July 8, 1977, obtained a judgment from the High Court of Singapore (the original court) whereby it was adjudged, *inter alia,* that the plaintiffs do recover against the second defendant (the respondent in the present proceedings) and 2 others, the sum of $20,645.22 with interest. The plaintiffs then applied under section 4 of the Reciprocal Enforcement of Judgements Act, 1958 (Act 99) to have the judgment against the respondent registered in Johore Bahru but only in respect of $11,460.38 with interest. On registration thereof being granted, the respondent applied for the setting aside of the said registration.

Held: (1) it is the intention of the Legislature to confer jurisdiction in the High Court of Malaysia under section 23(1)(b) of Act 91 on a person who does not reside or has no place of business or has no property within the local jurisdiction of the said High Court if such person is one of several defendants who have been sued where the other defendants are residing or have a place of business or have property within the local jurisdiction of the said High Court;

(2) since the provisions of section 23(1)(b) of the Act 91 are *in pari materia* with the provisions of section 16(1)(b) of the Singapore Act, the latter provisions should admit the same construction;

(3) the original court had jurisdiction to award judgment against the respondent by virtue of section 16(1)(b) and as such the respondent's application to have the registration of the judgment of the original court to be set aside should be dismissed with costs.

Cases referred to:

(1) *Tunku Abaidah* v. *Tan Boon Hoe* [1935] M.L.J. 214.

(2) *Murugappa Chettiar* v. *Krishnappa Chettiar* [1940] M.L.J. 200.

(3) *Anthinarayana Mudaliar* v. *Ajit Singh* [1953] M.L.J. 229.

ORIGINATING SUMMONS.

Ho Thian Cheh for the plaintiffs.

Chelliah Paramjothy for the defendants.

Cur. Adv. Vult.

Yusof Abdul Rashid J.: The plaintiffs, on July 8, 1977, obtained a judgment from the High Court of Singapore ("the original court") whereby it was adjudged, *inter alia,* that the plaintiffs do recover against the second defendant (the respondent in the instant proceedings) and two others, the sum of $20,645.22 together with the interest at the rate of 15% per annum with monthly rests from August 26, 1974 until judgment and thereafter at the rate of 8% per annum from the date of judgment until realisation and $458.59 by way of costs. The plaintiffs then applied under section 4 of the Reciprocal Enforcement of Judgment Act, 1958 ("Act 99") to have the judgment against the respondent registered in Johore Bahru but only in respect of a sum of $11,460.38 with interest at the rate of 8% per annum from July 1, 1980 until realisation and for $461.62 as costs. On the registration thereof being granted, the respondent applied for the setting aside of the said registration.

In the supporting affidavit, the respondent admitted that he was the second defendant in the Civil Suit No. 3329 of 1974 of the original court and that judgment was entered against him as alleged by the plaintiffs. However, the respondent contended that in purporting to give judgment against him the original court had acted without jurisdiction on the grounds that at all material times –

a) the respondent was not carrying on business nor was he ordinarily resident within the jurisdiction of the original court;

b) he was not served with the proceedings and did not voluntarily appear or otherwise submit or agree to the jurisdiction of the said original court in which the judgment was given against him;